

## Hubbard, Joseph

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**From:** Hubbard, Joseph  
**Sent:** Tuesday, May 11, 2021 2:15 PM  
**To:** jcorso@bizjournals.com  
**Cc:** Press; Durant, Jennah  
**Subject:** Re: Reporter request RE: possible FIFRA violation  
**Attachments:** HEB Advisory Letter.pdf

Hi Jessica,

Here's our statement:

EPA asked HEB, see attached the advisory letter, to remove BioErase Antimicrobial Surface Wipes from their shelves and online marketing webpages. EPA has reason to believe that BioErase Antimicrobial Surface Wipes may be in violation of the Federal Insecticide, Fungicide and Rodenticide Act, Section 12(a)(1)(A), distribution or sale of an unregistered pesticide, which is why HEB was instructed to remove the product from the Marketplace.

Best,

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Joe Hubbard  
U.S. Environmental Protection Agency  
OFFICE: 214-665-8476  
Hubbard.joseph@epa.gov

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**From:** Jessica Corso <[jcorso@bizjournals.com](mailto:jcorso@bizjournals.com)>  
**Sent:** Tuesday, May 11, 2021 1:35 PM  
**To:** Milbourn, Cathy <[Milbourn.Cathy@epa.gov](mailto:Milbourn.Cathy@epa.gov)>; [lynn.tricia@epa.gov](mailto:lynn.tricia@epa.gov)  
**Cc:** Press <[Press@epa.gov](mailto:Press@epa.gov)>  
**Subject:** Reporter request RE: possible FIFRA violation

Good afternoon,

I'm a reporter for the San Antonio Business Journal. I'm writing about a lawsuit between local grocer HEB and a company that makes anti-bacterial wipes called Bioerase. According to the lawsuit, the EPA informed HEB earlier this year that Bioerase made false claims that their wipes didn't need to be registered with the EPA and the agency told HEB to remove the product from its shelves. Is that

true? And, if so, is Bioerase under investigation for violation of the the Federal Insecticide, Fungicide, and Rodenticide Act?

Thank you,

Jessica Corso

Reporter, Energy and Manufacturing

San Antonio Business Journal

200 E Grayson St. #110

San Antonio, TX 78215

office: (210) 477-0848

cell: (314) 365-8242

## Hubbard, Joseph

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**From:** Hubbard, Joseph  
**Sent:** Friday, April 30, 2021 5:55 PM  
**To:** Houston Press  
**Cc:** Durant, Jennah  
**Subject:** Re: Maverick H-E-B Bioerase  
**Attachments:** HEB Advisory Letter.pdf

Hi,

Here's our statement:

EPA asked HEB, see attached the advisory letter, to remove BioErase Antimicrobial Surface Wipes from their shelves and online marketing webpages. EPA has reason to believe that BioErase Antimicrobial Surface Wipes may be in violation of the Federal Insecticide, Fungicide and Rodenticide Act, Section 12(a)(1)(A), distribution or sale of an unregistered pesticide, which is why HEB was instructed to remove the product from the Marketplace.

Best,

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Joe Hubbard  
U.S. Environmental Protection Agency  
OFFICE: 214-665-8476  
Hubbard.joseph@epa.gov

On Apr 30, 2021, at 1:56 PM, Houston Press <houstonpressnews@yahoo.com> wrote:

Mr. Hubbard,

I was wondering if you had received our email below— can you please confirm recipes of same?

----- Forwarded Message -----

**From:** Houston Press <houstonpressnews@yahoo.com>  
**To:** hubbard.joseph@epa.gov <hubbard.joseph@epa.gov>  
**Sent:** Friday, April 30, 2021, 11:16:22 AM CDT  
**Subject:** Maverick H-E-B Bioerase

Dear Mr. Hubbard,

We are doing a story on HEB, Maverick in Beaumont Texas and their product Bioerase in relationship to COVID-19 and organic disinfectants. I understand that you have stated that there is an investigation on behalf of the EPA regarding Maverick —we would ask that you could email us with any and all materials relating this investigation that would be public information to wit , who initiated this investigation, any and all correspondence or official complaints you have received, what does the investigation concern, who are the investigators, what are some of the ramifications of the investigation and why the EPA is investigating organic disinfectants

We would also love an interview with you regarding this matter to get some quotable information—we see that you have already talked to the San Antonio press involving this matter as they have quoted you. You can reach us on this email to set this up or call 4092830007.

We look forward to hearing from you

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BUSINESS

# H-E-B and Beaumont partnership's dispute over disinfecting wipes gets messier

Patrick Danner, Staff writer  
Updated: April 22, 2021 8:17 a.m.





The Environmental Protection Agency instructed H-E-B to remove BioErase antimicrobial surface wipes from store shelves within 30 days, the grocer says in an amended lawsuit this month. It's the latest twist in a dispute with the wipes' Beaumont distributor.

Patrick Danner /Staff

Skip

**Next Up:** Support group forms to help with grief

Already mired in litigation over BioErase antimicrobial surface wipes distributed by a Beaumont partnership, H-E-B disclosed the Environmental Protection Agency instructed the grocery chain to remove the wipes from store shelves within 30 days.

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The EPA requires cleaning products that make pesticidal or disinfection claims on their labeling, such as controlling bacteria or viruses, must be registered with the federal agency.

BioErase products state they're exempt from EPA registration because they're classified as "minimal risk pesticides" under federal law due to their all-natural ingredients. H-E-B, however, says it learned from the EPA that the claim is false, so the wipes can't be legally sold.

### **On ExpressNews.com: [H-E-B, Beaumont partnership wrangle over disinfecting wipes](#)**

The EPA has opened an investigation into Beaumont-based Maverick International Ltd. in connection with the distribution of a possibly unregistered pesticide, agency spokesman Joseph Hubbard said in an email Wednesday.

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H-E-B accuses Maverick of attempting to hide the registration requirement from the San Antonio chain in order to sell BioErase.

H-E-B says in an amended lawsuit filed this month in state District Court in San Antonio that it's now stuck with "worthless" BioErase inventory.

“Due to Maverick’s false and fraudulent claims regarding BioErase’s alleged EPA exemption, H-E-B will have to incur additional losses in removing the product from its shelves and storing and/or disposing” it, the grocer says.

H-E-B has “recalled and assembled thousands of units of BioErase product in its warehouse facilities in Bexar County,” it adds.

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It’s the latest twist in an escalating legal spat, which started last month when H-E-B sued Maverick for allegedly failing to deliver the quantities of BioErase the grocer ordered and for missing deadlines.

The grocer wanted the wipes because of increasing demand for surface cleaning products amid the coronavirus pandemic.

H-E-B says it agreed to buy almost 599,000 BioErase canisters, while Maverick alleges the grocer committed to buy 500,000 canisters a month over a 12-month period — for a total of 6 million units.



Maverick has sued H-E-B in state District Court in Jefferson County, alleging statements the grocer made led Maverick to delay filing its suit first. Maverick wants all of the litigation to unfold on its home turf rather than in San Antonio.

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Maverick acquired millions of canisters of “dry” wipes and tens of thousands of gallons of disinfecting liquid to activate the wipes based on an agreement it says it

reached with H-E-B. Maverick says H-E-B slowed the pace of delivery of the canisters and delayed the issuance of purchase orders.

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Besides alleging H-E-B is liable for 6 million canisters, Maverick is suing H-E-B for “business disparagement” and “defamation” over comments to the Express-News about the grocer’s original lawsuit.

Maverick “consistently failed to honor its commitments in a timely manner,” H-E-B spokesman Valentino Lucio said in an email last month. “This left H-E-B without the products to fulfill customer needs and resulted in lost sales.”

Maverick alleges H-E-B chose to “leak” or “publicize” the matter to the Express-News. The newspaper’s article on the dispute also appeared on the website of the Beaumont Enterprise, a sister publication.

Court documents in H-E-B’s case are accessible at the Bexar County clerk’s office.

Both H-E-B and Maverick are suing each other for more than \$1 million in damages.

H-E-B originally sued for breach of the purchase orders. It also sought a court judgment declaring that it had fulfilled its obligations and did not commit to purchasing 6 million. H-E-B now is making more claims, including for fraud and negligent misrepresentation. It wants the court to rescind all agreements with

Maverick.

Maverick's failure to deliver the BioErase wipes in a timely fashion led to a glut of inventory as demand tapered off, H-E-B says. It resorted to marking down the canisters to \$7.99 from \$9.98 at one store last month. There also were coupons offering an additional \$2.50 off.

Lucio, the H-E-B spokesman, declined to comment Tuesday. Maverick's lawyers did not respond to a request for comment.

*pdanner@express-news.net*

Written By

**Patrick Danner**

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## Hubbard, Joseph

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**From:** Danner, Patrick <PDanner@express-news.net>  
**Sent:** Wednesday, April 21, 2021 11:56 AM  
**To:** Hubbard, Joseph  
**Cc:** Milbourn, Cathy; Durant, Jennah  
**Subject:** RE: DDL Today 4.20.21: San Antonio Express-News. Bioerase antimicrobial surface wipes.

Thank you, Joe.

*Patrick Danner*  
*Business writer*  
*San Antonio Express-News*  
*p: 210.250.3311 f: 210.250.3232*  
[pdanner@express-news.net](mailto:pdanner@express-news.net)  
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**From:** Hubbard, Joseph <Hubbard.Joseph@epa.gov>  
**Sent:** Wednesday, April 21, 2021 11:53 AM  
**To:** Danner, Patrick <PDanner@express-news.net>  
**Cc:** Milbourn, Cathy <Milbourn.Cathy@epa.gov>; Durant, Jennah <Durant.Jennah@epa.gov>  
**Subject:** [EXTERNAL] RE: DDL Today 4.20.21: San Antonio Express-News. Bioerase antimicrobial surface wipes.

Hi Patrick,

We understand you had questions about a recent EPA action with H-E-B re: BioErase. Here's the advisory letter and our statement.

EPA asked HEB, see attached advisory letter, to remove BioErase Antimicrobial Surface Wipes from their shelves and online marketing webpages. EPA has reason to believe that BioErase Antimicrobial Surface Wipes may be in violation of the Federal Insecticide, Fungicide and Rodenticide Act, Section 12(a)(1)(A), distribution or sale of an unregistered pesticide, which is why HEB was instructed to remove the product from the Marketplace.

EPA has opened an investigation into the distributors of Bioerase.

Best,

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Joe Hubbard  
U.S. Environmental Protection Agency  
OFFICE: 214-665-8476  
[Hubbard.joseph@epa.gov](mailto:Hubbard.joseph@epa.gov)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

March 31, 2021

**Via Electronic Mail:**

*Schiffmacher.karen@heb.com*

*Heath.jennifer@heb.com*

Karen Schiffmacher  
HEB  
646 S Flores  
San Antonio, TX. 78204

Re: Advisory Letter – HEB

Dear Ms. Schiffmacher:

The United States Environmental Protection Agency is issuing this advisory letter to HEB concerning the advertising and marketing information located on the website, <https://www.heb.com/product-detail/bioerase-antimicrobial-surface-wipes/4235007>. This advisory addresses claims made relating to pests, including bacteria and viruses, for the pesticidal product BioErase Antimicrobial Surface Wipes (Unregistered Product – No EPA Registration Number), and the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

On March 19, 2021, the EPA spoke with representatives of HEB regarding claims made on the website for BioErase Antimicrobial Surface Wipes. At the time of EPA's communication with HEB, claims were made on the website that the product, "BioErase Antimicrobial Surface Wipes is a broad-spectrum antimicrobial cleaner to kill bacteria and viruses." At the time of the EPA's communication with HEB, the product BioErase Antimicrobial Surface Wipes was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

As the EPA discussed with Company representatives, the distribution or sale of an unregistered pesticide may constitute a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Thank you for HEB's immediate attention to remove any potentially violative claims from the website, and any advertisement until such time the product can be registered with the EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. Should you need any additional information, please reference the EPA Coronavirus Disease (COVID-19) webpage at <https://www.epa.gov/coronavirus>.

Please note that this Advisory Letter does not limit or preclude the EPA's ability to take additional enforcement action authorized pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), including penalties of up to \$20,228 per violation.

If you have any questions concerning this Advisory Letter, please contact Lawrence Pittman with the Office of Regional Counsel, at (214) 665-8381, or [Pittman.Lawrence@epa.gov](mailto:Pittman.Lawrence@epa.gov), or Lee McMillan at (214) 665-6404, or [mcmillan.lee@epa.gov](mailto:mcmillan.lee@epa.gov). Thank you for your cooperation in this matter.

Sincerely,

Margaret E. Osbourne, Chief  
Waste Enforcement Branch